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BAMBURY INCORPORATED dba CARNEROS DELI,
7 and CATHERINE BONNEAU VINEYARD LLC

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

12 BYRON CHAPMAN

13 Plaintiff,

14 v.

15 CARNEROS DELI; CATHERINE
BONNEAU VINEYARD LLC, a
16 California Limited Liability
Company; BAMBURY
17 INCORPORATED, a California
Corporation dba CARNEROS DELI,

18 Defendants,
19
20

Case No: 4:16-cv-01275-KAW

*[This case has been assigned to Judge
Kandis A. Westmore]*

**DEFENDANTS' ANSWER AND
AFFIRMATIVE DEFENSES**

Complaint Filed: 3/15/16
Trial Date: None Set

21 Defendants BAMBURY INCORPORATED dba CARNEROS DELI,
22 CARNEROS DELI, and CATHERINE BONNEAU VINEYARD LLC
23 (hereinafter "Defendants") hereby answer the Complaint of Plaintiff BYRON
24 CHAPMAN ("Plaintiff"), filed on March 15, 2016 and provide notice of their
25 Affirmative Defenses to same as follows.

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SPECIFIC RESPONSES

INTRODUCTION

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3 1. In answering paragraph 1 of the Complaint, the allegations contained
4 therein constitute legal assertions, conclusions, and/or argument to which no
5 response is required; however, to the extent that any response is required,
6 Defendants deny the allegations contained in paragraph 1 of the Complaint.

7 2. In answering paragraph 2 of the Complaint, the allegations contained
8 therein constitute legal assertions, conclusions, and/or argument to which no
9 response is required; however, to the extent that any response is required,
10 Defendants deny the allegations contained in paragraph 2 of the Complaint.

11 3. In answering paragraph 3 of the Complaint, Defendants lack sufficient
12 information regarding Plaintiff's alleged physical disabilities and patronage history
13 to either admit or deny Plaintiff's allegations and therefore, Defendants deny
14 Plaintiff's allegations. Otherwise, the allegations contained therein constitute legal
15 assertions, conclusions, and/or argument to which no response is required;
16 however, to the extent that any response is required, Defendants deny the
17 allegations contained in paragraph 3 of the Complaint.

18 **JURISDICTION AND VENUE**

19 4. In answering paragraph 4 of the Complaint, the allegations contained
20 therein constitute legal assertions, conclusions, and/or argument to which no
21 response is required; however, to the extent that any response is required,
22 Defendants deny the allegations contained in paragraph 4 of the Complaint.

23 5. In answering paragraph 5 of the Complaint, Defendants admit
24 CARNEROS DELI is located at 23001 Arnold Drive, Sonoma, CA 95476.
25 Otherwise, the allegations contained therein constitute legal assertions,
26 conclusions, and/or argument to which no response is required; however, to the
27 extent that any response is required, Defendants deny the allegations contained in
28 paragraph 5 of the Complaint.

PARTIES

6. In answering paragraph 6 of the Complaint, Defendants lack sufficient information regarding Plaintiff's alleged physical disabilities to either admit or deny Plaintiff's allegations and therefore, Defendants deny Plaintiff's allegations. Otherwise, the allegations contained therein constitute legal assertions, conclusions, and/or argument to which no response is required; however, to the extent that any response is required, Defendants deny the allegations contained in paragraph 6 of the Complaint.

7. In answering paragraph 7(a)-(1) of the Complaint, the allegations contained therein constitute legal assertions, definitions, conclusions, and/or argument to which no response is required; however, to the extent that any response is required, Defendants deny the allegations contained in paragraph 7(a)-(1) of the Complaint.

PRELIMINARY FACTUAL ALLEGATIONS

8. In answering paragraph 8 of the Complaint, Defendants lack sufficient information regarding Plaintiff's alleged physical disabilities to either admit or deny Plaintiff's allegations and therefore, Defendants deny Plaintiff's allegations. Otherwise, the allegations contained therein constitute legal assertions, conclusions, and/or argument to which no response is required; however, to the extent that any response is required, Defendants deny the allegations contained in paragraph 8 of the Complaint.

9. In answering paragraph 9 of the Complaint, Defendants admit CARNEROS DELI is located at 23001 Arnold Drive, Sonoma, CA 95476. Otherwise, the allegations contained therein constitute legal assertions, conclusions, and/or argument to which no response is required; however, to the extent that any response is required, Defendants deny the allegations contained in paragraph 9 of the Complaint.

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1 10. In answering paragraph 10 of the Complaint, Defendants deny each
2 and every allegation in paragraph 10 of the Complaint.

3 11. In answering paragraph 11 of the Complaint, Defendants admit
4 Defendant Bambury Incorporated is the owner of Defendant Carneros Deli.
5 Otherwise, Defendants deny each and every allegation in paragraph 11 of the
6 Complaint.

7 12. In answering paragraph 12 of the Complaint, Defendants admit that
8 Bambury Incorporated owns and operates Carneros Deli and that Carneros Deli is
9 open to the general public. Otherwise, Defendants deny the allegations contained
10 in paragraph 12 of the Complaint.

11 13. In answering paragraph 13 of the Complaint, Defendants deny each
12 and every allegation in paragraph 13 of the Complaint.

13 14. In answering paragraph 14 of the Complaint, the allegations contained
14 therein constitute legal assertions, definitions, conclusions, and/or argument to
15 which no response is required; however, to the extent that any response is required,
16 Defendants deny the allegations contained in paragraph 14 of the Complaint.

17 15. In answering paragraph 15 of the Complaint, the allegations contained
18 therein constitute legal assertions, definitions, conclusions, and/or argument to
19 which no response is required; however, to the extent that any response is required,
20 Defendants deny the allegations contained in paragraph 15 of the Complaint.

21 16. In answering paragraph 16 of the Complaint, Defendants deny each
22 and every allegation in paragraph 16 of the Complaint.

23 17. In answering paragraph 17 of the Complaint, Defendants admit
24 Carneros Deli maintained and maintains handicap signage at its facility and is and
25 was handicap accessible and handicap usable. Otherwise, the allegations contained
26 therein constitute legal assertions, definitions, conclusions, and/or argument to
27 which no response is required; however, to the extent that any response is required,
28 Defendants deny the allegations contained in paragraph 17 of the Complaint.

1 18. In answering paragraph 18 of the Complaint, Defendants lack
2 sufficient information regarding Plaintiff's allegations contained therein and
3 therefore, Defendants deny Plaintiff's allegations.

4 19. In answering paragraph 19 of the Complaint, Defendants lack
5 sufficient information regarding Plaintiff's allegations contained therein and
6 therefore, Defendants deny Plaintiff's allegations.

7 20. In answering paragraph 20 of the Complaint, Defendants lack
8 sufficient information regarding Plaintiff's allegations contained therein and
9 therefore, Defendants deny Plaintiff's allegations.

10 21. In answering paragraph 21 of the Complaint, Defendants lack
11 sufficient information regarding Patrick Connally's alleged physical disabilities
12 and patronage history to either admit or deny Plaintiff's allegations. Therefore,
13 Defendants deny Plaintiff's allegations. Otherwise, the allegations contained
14 therein constitute legal assertions, conclusions, and/or argument to which no
15 response is required; however, to the extent that any response is required,
16 Defendants deny the allegations contained in paragraph 21 of the Complaint.

17 22. In answering paragraph 22 of the Complaint, Defendants lack
18 sufficient information regarding Patrick Connally's patronage history to either
19 admit or deny Plaintiff's allegations and therefore, Defendants deny Plaintiff's
20 allegations. Otherwise, the allegations contained therein constitute legal assertions,
21 conclusions, and/or argument to which no response is required; however, to the
22 extent that any response is required, Defendants deny the allegations contained in
23 paragraph 22 of the Complaint.

24 23. In answering paragraph 23 of the Complaint, Defendants lack
25 sufficient information regarding Patrick Connally's patronage history to either
26 admit or deny Plaintiff's allegations. Therefore, Defendants deny Plaintiff's
27 allegations. Otherwise, the allegations contained therein constitute legal assertions,
28 conclusions, and/or argument to which no response is required; however, to the

1 extent that any response is required, Defendants deny the allegations contained in
2 paragraph 23 of the Complaint.

3 24. In answering paragraph 24 of the Complaint, Defendants admit
4 Carneros Deli received correspondence purportedly signed by Patrick Connally as
5 quoted in Plaintiff's Complaint.

6 25. In answering paragraph 25 of the Complaint, Defendants admit the
7 allegations contained therein.

8 26. In answering paragraph 26 of the Complaint, Defendants admit
9 Carneros Deli received correspondence purportedly signed by Patrick Connally as
10 quoted in Plaintiff's Complaint.

11 27. In answering paragraph 27 of the Complaint, Defendants admit the
12 allegations contained therein.

13 28. In answering paragraph 28 of the Complaint, Defendants lack
14 sufficient information regarding Plaintiff's patronage history to either admit or
15 deny Plaintiff's allegations and therefore, Defendants deny Plaintiff's allegations.

16 29. In answering paragraph 29 of the Complaint, Defendants lack
17 sufficient information regarding Plaintiff's alleged physical disabilities and
18 patronage history to either admit or deny Plaintiff's allegations and therefore
19 Defendants deny Plaintiff's allegations. Otherwise, the allegations contained
20 therein constitute legal assertions, conclusions, and/or argument to which no
21 response is required; however, to the extent that any response is required,
22 Defendants deny the allegations contained in paragraph 29 of the Complaint.

23 30. In answering paragraph 30 of the Complaint, Defendants lack
24 sufficient information regarding Plaintiff's alleged physical disabilities and
25 patronage history to either admit or deny Plaintiff's allegations and therefore,
26 Defendants deny Plaintiff's allegations. Otherwise, the allegations contained
27 therein constitute legal assertions, conclusions, and/or argument to which no
28 response is required; however, to the extent that any response is required,

1 Defendants deny the allegations contained in paragraph 30 of the Complaint.

2 31. In answering paragraph 31 of the Complaint, Defendants lack
3 sufficient information regarding Plaintiff's alleged physical disabilities and
4 patronage history to either admit or deny Plaintiff's allegations and therefore,
5 Defendants deny Plaintiff's allegations. Otherwise, the allegations contained
6 therein constitute legal assertions, conclusions, and/or argument to which no
7 response is required; however, to the extent that any response is required,
8 Defendants deny the allegations contained in paragraph 31 of the Complaint.

9 32. In answering paragraph 32 of the Complaint, Defendants lack
10 sufficient information regarding Plaintiff's alleged physical disabilities and
11 patronage history to either admit or deny Plaintiff's allegations and therefore,
12 Defendants deny Plaintiff's allegations. Otherwise, the allegations contained
13 therein constitute legal assertions, conclusions, and/or argument to which no
14 response is required; however, to the extent that any response is required,
15 Defendants deny the allegations contained in paragraph 32 of the Complaint.

16 33. In answering paragraph 33 of the Complaint, Defendants lack
17 sufficient information to either admit or deny Plaintiff's allegations and therefore,
18 Defendants deny Plaintiff's allegations. Otherwise, the allegations contained
19 therein constitute legal assertions, conclusions, and/or argument to which no
20 response is required; however, to the extent that any response is required,
21 Defendants deny the allegations contained in paragraph 33 of the Complaint.

22 34. In answering paragraph 34 of the Complaint, Defendants lack
23 sufficient information to either admit or deny Plaintiff's allegations and therefore,
24 Defendants deny Plaintiff's allegations.

25 35. In answering paragraph 35 of the Complaint, Defendants lack
26 sufficient information to either admit or deny Plaintiff's allegations and therefore,
27 Defendants deny Plaintiff's allegations. Further, the allegations contained therein
28 constitute legal assertions, definitions, conclusions, and/or argument to which no

1 response is required; however, to the extent that any response is required,
2 Defendants deny the allegations contained in paragraph 35 of the Complaint.

3 36. In answering paragraph 36 of the Complaint, Defendants lack
4 sufficient information to either admit or deny Plaintiff's allegations and therefore,
5 Defendants deny Plaintiff's allegations. Further, the allegations contained therein
6 constitute legal assertions, definitions, conclusions, and/or argument to which no
7 response is required; however, to the extent that any response is required,
8 Defendants deny the allegations contained in paragraph 36 of the Complaint.

9 37. In answering paragraph 37 of the Complaint, Defendants lack
10 sufficient information to either admit or deny Plaintiff's allegations and therefore,
11 Defendants deny Plaintiff's allegations. Further, the allegations contained therein
12 constitute legal assertions, definitions, conclusions, and/or argument to which no
13 response is required; however, to the extent that any response is required,
14 Defendants deny the allegations contained in paragraph 37 of the Complaint.

15 38. In answering paragraph 38 of the Complaint, Defendants lack
16 sufficient information to either admit or deny Plaintiff's allegations and therefore,
17 Defendants deny Plaintiff's allegations. Specifically, Defendants are unaware of
18 the "architectural barriers" Plaintiff complains of, as well as the extent of Plaintiff's
19 patronage at Carneros Deli. Defendants deny Defendant Bonneau Vineyard LLC
20 was at any time either owner, operator, or lessor of Defendant Carneros Deli.
21 Otherwise, the allegations contained therein constitute legal assertions, definitions,
22 conclusions, and/or argument to which no response is required; however, to the
23 extent that any response is required to Plaintiff's additional allegations, Defendants
24 deny the allegations contained in paragraph 38 of the Complaint.

25 39. In answering paragraph 39 of the Complaint, the allegations contained
26 therein constitute legal assertions, definitions, conclusions, and/or argument to
27 which no response is required; however, to the extent that any response is required,
28 Defendants deny the allegations contained in paragraph 39 of the Complaint.

1 40. In answering paragraph 40 of the Complaint, Defendants lack
2 sufficient information to either admit or deny Plaintiff's allegations and therefore,
3 Defendants deny Plaintiff's allegations. Otherwise, the allegations contained
4 therein constitute legal assertions, conclusions, and/or argument to which no
5 response is required; however, to the extent that any response is required,
6 Defendants deny the allegations contained in paragraph 40 of the Complaint.

7 41. In answering paragraph 41 of the Complaint, Defendants lack
8 sufficient information regarding Plaintiff's alleged physical disabilities and
9 patronage history to either admit or deny Plaintiff's allegations and therefore
10 Defendants deny Plaintiff's allegations. Otherwise, the allegations contained
11 therein constitute legal assertions, conclusions, and/or argument to which no
12 response is required; however, to the extent that any response is required,
13 Defendants deny the allegations contained in paragraph 41 of the Complaint.

14 42. In answering paragraph 42 of the Complaint, Defendants lack
15 sufficient information to either admit or deny Plaintiff's allegations and therefore,
16 Defendants deny Plaintiff's allegations. Otherwise, the allegations contained
17 therein constitute legal assertions, conclusions, and/or argument to which no
18 response is required; however, to the extent that any response is required,
19 Defendants deny the allegations contained in paragraph 42 of the Complaint.

20 43. In answering paragraph 43 of the Complaint, the allegations contained
21 therein constitute legal assertions, definitions, conclusions, and/or argument to
22 which no response is required; however, to the extent that any response is required,
23 Defendants deny the allegations contained in paragraph 43 of the Complaint.

24 44. In answering paragraph 44 of the Complaint, the allegations contained
25 therein constitute legal assertions, definitions, conclusions, and/or argument to
26 which no response is required; however, to the extent that any response is required,
27 Defendants deny the allegations contained in paragraph 44 of the Complaint.

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1 45. In answering paragraph 45 of the Complaint, the allegations contained
2 therein constitute legal assertions, definitions, conclusions, and/or argument to
3 which no response is required; however, to the extent that any response is required,
4 Defendants deny the allegations contained in paragraph 45 of the Complaint.

5 46. In answering paragraph 46 of the Complaint, Defendants lack
6 sufficient information to either admit or deny Plaintiff's allegations and therefore,
7 Defendants deny Plaintiff's allegations. Otherwise, in answering paragraph 46 of
8 the Complaint, the allegations contained therein constitute legal assertions,
9 definitions, conclusions, and/or argument to which no response is required;
10 however, to the extent that any response is required, Defendants deny the
11 allegations contained in paragraph 46 of the Complaint.

12 47. In answering paragraph 47 of the Complaint, Defendants lack
13 sufficient information regarding Plaintiff's alleged physical disabilities and
14 patronage history to either admit or deny Plaintiff's allegations and therefore,
15 Defendants deny Plaintiff's allegations. Otherwise, the allegations contained
16 therein constitute legal assertions, conclusions, and/or argument to which no
17 response is required; however, to the extent that any response is required,
18 Defendants deny the allegations contained in paragraph 47 of the Complaint.

19 48. In answering paragraph 48 of the Complaint, Defendants lack
20 sufficient information to either admit or deny Plaintiff's allegations and therefore
21 Defendants deny Plaintiff's allegations. Defendants deny Defendant Bonneau
22 Vineyard LLC was at any time either owner, operator, or lessor of Defendant
23 Carneros Deli. Otherwise, the allegations contained therein constitute legal
24 assertions, definitions, conclusions, and/or argument to which no response is
25 required; however, to the extent that any response is required to Plaintiff's
26 additional allegations, Defendants deny the allegations contained in paragraph 38
27 of the Complaint.

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1 49. In answering paragraph 49 of the Complaint, the allegations contained
2 therein constitute legal assertions, definitions, conclusions, and/or argument to
3 which no response is required; however, to the extent that any response is required,
4 Defendants deny the allegations contained in paragraph 49 of the Complaint.

5 50. In answering paragraph 50 of the Complaint, the allegations contained
6 therein constitute legal assertions, definitions, conclusions, and/or argument to
7 which no response is required; however, to the extent that any response is required,
8 Defendants deny the allegations contained in paragraph 50 of the Complaint.

9 51. In answering paragraph 51 of the Complaint, Defendants deny the
10 allegations contained in paragraph 51 of the Complaint.

11 52. In answering paragraph 52 of the Complaint, Defendants deny the
12 allegations contained in paragraph 52 of the Complaint.

13 53. In answering paragraph 53 of the Complaint, the allegations contained
14 therein constitute legal assertions, definitions, conclusions, and/or argument to
15 which no response is required; however, to the extent that any response is required,
16 Defendants deny the allegations contained in paragraph 53 of the Complaint.

17 54. In answering paragraph 54 of the Complaint, Defendants lack
18 sufficient information regarding Plaintiff's state of mind to either admit or deny
19 Plaintiff's allegations and therefore Defendants deny Plaintiff's allegations.
20 Further, the allegations contained therein constitute legal assertions, definitions,
21 conclusions, and/or argument to which no response is required; however, to the
22 extent that any response is required to Plaintiff's additional allegations, Defendants
23 deny the allegations contained in paragraph 38 of the Complaint.

24 55. In answering paragraph 55 of the Complaint, the allegations contained
25 therein constitute legal assertions, definitions, conclusions, and/or argument to
26 which no response is required; however, to the extent that any response is required,
27 Defendants deny the allegations contained in paragraph 55 of the Complaint.

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1 56. In answering paragraph 56 of the Complaint, the allegations contained
2 therein constitute legal assertions, definitions, conclusions, and/or argument to
3 which no response is required; however, to the extent that any response is required,
4 Defendants deny the allegations contained in paragraph 56 of the Complaint.

5 57. In answering paragraph 57 of the Complaint, Defendants are unaware
6 of "CANNERS DELI" and therefore, unable to admit or deny any allegations
7 regarding the same. Defendants deny Defendant Bonneau Vineyard LLC was at
8 any time either owner, operator, or lessor of Defendant Carneros Deli. Otherwise,
9 the allegations contained therein constitute legal assertions, definitions,
10 conclusions, and/or argument to which no response is required; however, to the
11 extent that any response is required to Plaintiff's additional allegations, Defendants
12 deny the allegations contained in paragraph 57 of the Complaint.

13 58. In answering paragraph 58 of the Complaint, Defendants are unaware
14 of "CANNERS DELI" and therefore, unable to admit or deny any allegations
15 regarding the same. Otherwise, the allegations contained therein constitute legal
16 assertions, definitions, conclusions, and/or argument to which no response is
17 required; however, to the extent that any response is required to Plaintiff's
18 additional allegations, Defendants deny the allegations contained in paragraph 58
19 of the Complaint.

20 59. In answering paragraph 59 of the Complaint, Defendants lack
21 sufficient information to either admit or deny Plaintiff's allegations and therefore
22 Defendants deny Plaintiff's allegations. Further, the allegations contained therein
23 constitute legal assertions, definitions, conclusions, and/or argument to which no
24 response is required; however, to the extent that any response is required to
25 Plaintiff's additional allegations, Defendants deny the allegations contained in
26 paragraph 59 of the Complaint.

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FIRST CAUSE OF ACTION

60. In answering paragraph 60 of the Complaint, Defendants herein incorporate by reference their responses to paragraphs 1-59 of the Complaint as set forth above.

61. In answering paragraph 61 of the Complaint, the allegations contained therein constitute legal assertions, definitions, conclusions, and/or argument to which no response is required; however, to the extent that any response is required, Defendants deny the allegations contained in paragraph 61 of the Complaint.

62. In answering paragraph 62 of the Complaint, the allegations contained therein constitute legal assertions, definitions, conclusions, and/or argument to which no response is required; however, to the extent that any response is required, Defendants deny the allegations contained in paragraph 62 of the Complaint.

63. In answering paragraph 63 of the Complaint, the allegations contained therein constitute legal assertions, definitions, conclusions, and/or argument to which no response is required; however, to the extent that any response is required, Defendants deny the allegations contained in paragraph 63 of the Complaint.

64. In answering paragraph 64 of the Complaint, the allegations contained therein constitute legal assertions, definitions, conclusions, and/or argument to which no response is required; however, to the extent that any response is required, Defendants deny the allegations contained in paragraph 64 of the Complaint.

65. In answering paragraph 65 of the Complaint, the allegations contained therein constitute legal assertions, definitions, conclusions, and/or argument to which no response is required; however, to the extent that any response is required, Defendants deny the allegations contained in paragraph 65 of the Complaint.

66. In answering paragraph 66 of the Complaint, Defendants are unaware of "CANNERS DELI" and therefore, unable to admit or deny any allegations regarding the same. Otherwise, the allegations contained therein constitute legal assertions, definitions, conclusions, and/or argument to which no response is

1 required; however, to the extent that any response is required to Plaintiff's
2 additional allegations, Defendants deny the allegations contained in paragraph 66
3 of the Complaint.

4 67. In answering paragraph 67 of the Complaint, the allegations contained
5 therein constitute legal assertions, definitions, conclusions, and/or argument to
6 which no response is required; however, to the extent that any response is required,
7 Defendants deny the allegations contained in paragraph 67 of the Complaint.

8 68. In answering paragraph 68 of the Complaint, Defendants are unaware
9 of "CANNERS DELI" and therefore, unable to admit or deny any allegations
10 regarding the same.

11 69. In answering paragraph 69 of the Complaint, the allegations contained
12 therein constitute legal assertions, definitions, conclusions, and/or argument to
13 which no response is required; however, to the extent that any response is required,
14 Defendants deny the allegations contained in paragraph 69 of the Complaint.

15 70. In answering paragraph 70 of the Complaint, the allegations contained
16 therein constitute legal assertions, definitions, conclusions, and/or argument to
17 which no response is required; however, to the extent that any response is required,
18 Defendants deny the allegations contained in paragraph 70 of the Complaint.

19 71. In answering paragraph 71 of the Complaint, the allegations contained
20 therein constitute legal assertions, definitions, conclusions, and/or argument to
21 which no response is required; however, to the extent that any response is required,
22 Defendants deny the allegations contained in paragraph 71 of the Complaint.

23 **SECOND CAUSE OF ACTION**

24 72. In answering paragraph 72 of the Complaint, Defendants herein
25 incorporate by reference their responses to paragraphs 1-71 of the Complaint as set
26 forth above.

27 73. In answering paragraph 73 of the Complaint, the allegations contained
28 therein constitute legal assertions, definitions, conclusions, and/or argument to

1 which no response is required; however, to the extent that any response is required,
2 Defendants deny the allegations contained in paragraph 73 of the Complaint.

3 74. In answering paragraph 74 of the Complaint, the allegations contained
4 therein constitute legal assertions, definitions, conclusions, and/or argument to
5 which no response is required; however, to the extent that any response is required,
6 Defendants deny the allegations contained in paragraph 74 of the Complaint.

7 75. In answering paragraph 75 of the Complaint, the allegations contained
8 therein constitute legal assertions, definitions, conclusions, and/or argument to
9 which no response is required; however, to the extent that any response is required,
10 Defendants deny the allegations contained in paragraph 75 of the Complaint.

11 76. In answering paragraph 76 of the Complaint, Defendants are unaware
12 of "CANNERS DELI" and therefore, unable to admit or deny any allegations
13 regarding the same. Otherwise, the allegations contained therein constitute legal
14 assertions, definitions, conclusions, and/or argument to which no response is
15 required; however, to the extent that any response is required, Defendants deny the
16 allegations contained in paragraph 76 of the Complaint

17 77. In answering paragraph 77 of the Complaint, Defendants lack
18 sufficient information regarding Plaintiff's alleged physical disabilities and
19 patronage history to either admit or deny Plaintiff's allegations and therefore
20 Defendants deny Plaintiff's allegations. Defendants are unaware of "CANNERS
21 DELI" and therefore, unable to admit or deny any allegations regarding the same.
22 Otherwise, the allegations contained therein constitute legal assertions,
23 conclusions, and/or argument to which no response is required; however, to the
24 extent that any response is required, Defendants deny the allegations contained in
25 paragraph 77 of the Complaint.

26 78. In answering paragraph 78 of the Complaint, Defendants are unaware
27 of "CANNERS DELI" and therefore, unable to admit or deny any allegations
28 regarding the same. Otherwise, the allegations contained therein constitute legal

1 assertions, definitions, conclusions, and/or argument to which no response is
2 required; however, to the extent that any response is required, Defendants deny the
3 allegations contained in paragraph 78 of the Complaint

4 79. In answering paragraph 79 of the Complaint, the allegations contained
5 therein constitute legal assertions, definitions, conclusions, and/or argument to
6 which no response is required; however, to the extent that any response is required,
7 Defendants deny the allegations contained in paragraph 79 of the Complaint.

8 80. In answering paragraph 80 of the Complaint, Defendants lack
9 sufficient information to either admit or deny Plaintiff's allegations and therefore
10 Defendant's deny Plaintiff's allegations. Otherwise, the allegations contained
11 therein constitute legal assertions, conclusions, and/or argument to which no
12 response is required; however, to the extent that any response is required,
13 Defendants deny the allegations contained in paragraph 80 of the Complaint.

14 81. In answering paragraph 81 of the Complaint, Defendants lack
15 sufficient information to either admit or deny Plaintiff's allegations and therefore
16 Defendant's deny Plaintiff's allegations. Otherwise, in answering paragraph 81 of
17 the Complaint, the allegations contained therein constitute legal assertions,
18 definitions, conclusions, and/or argument to which no response is required;
19 however, to the extent that any response is required, Defendants deny the
20 allegations contained in paragraph 81 of the Complaint.

21 **THIRD CAUSE OF ACTION**

22 82. In answering paragraph 82 of the Complaint, Defendants herein
23 incorporate by reference their responses to paragraphs 1-81 of the Complaint as set
24 forth above.

25 83. In answering paragraph 83 of the Complaint, the allegations contained
26 therein constitute legal assertions, definitions, conclusions, and/or argument to
27 which no response is required; however, to the extent that any response is required,
28 Defendants deny the allegations contained in paragraph 83 of the Complaint.

1 84. In answering paragraph 84 of the Complaint, Defendants are unaware
2 of "CANNERS DELI" and therefore, unable to admit or deny any allegations
3 regarding the same. Otherwise, the allegations contained therein constitute legal
4 assertions, definitions, conclusions, and/or argument to which no response is
5 required; however, to the extent that any response is required, Defendants deny the
6 allegations contained in paragraph 84 of the Complaint.

7 85. In answering paragraph 85 of the Complaint, Defendants are unaware
8 of "CANNERS DELI" and therefore, unable to admit or deny any allegations
9 regarding the same. Otherwise, the allegations contained therein constitute legal
10 assertions, definitions, conclusions, and/or argument to which no response is
11 required; however, to the extent that any response is required, Defendants deny the
12 allegations contained in paragraph 85 of the Complaint.

13 86. In answering paragraph 86 of the Complaint, Defendants are unaware
14 of "CANNERS DELI" and therefore, unable to admit or deny any allegations
15 regarding the same.

16 87. In answering paragraph 87 of the Complaint, Defendants lack
17 sufficient information to either admit or deny Plaintiff's allegations and therefore
18 Defendant's deny Plaintiff's allegations. Otherwise, in answering paragraph 87 of
19 the Complaint, the allegations contained therein constitute legal assertions,
20 definitions, conclusions, and/or argument to which no response is required;
21 however, to the extent that any response is required, Defendants deny the
22 allegations contained in paragraph 87 of the Complaint.

23 88. In answering paragraph 88 of the Complaint, Defendants lack
24 sufficient information to either admit or deny Plaintiff's allegations and therefore
25 Defendant's deny Plaintiff's allegations. Otherwise, in answering paragraph 88 of
26 the Complaint, the allegations contained therein constitute legal assertions,
27 definitions, conclusions, and/or argument to which no response is required;
28 however, to the extent that any response is required, Defendants deny the

1 allegations contained in paragraph 88 of the Complaint.

2 89. In answering paragraph 89 of the Complaint, the allegations contained
3 therein constitute legal assertions, definitions, conclusions, and/or argument to
4 which no response is required; however, to the extent that any response is required,
5 Defendants deny the allegations contained in paragraph 89 of the Complaint.

6 **FOURTH CAUSE OF ACTION**

7 90. In answering paragraph 90 of the Complaint, Defendants herein
8 incorporate by reference their responses to paragraphs 1-89 of the Complaint as set
9 forth above.

10 91. In answering paragraph 91 of the Complaint, the allegations contained
11 therein constitute legal assertions, definitions, conclusions, and/or argument to
12 which no response is required; however, to the extent that any response is required,
13 Defendants deny the allegations contained in paragraph 91 of the Complaint.

14 92. In answering paragraph 92 of the Complaint, the allegations contained
15 therein constitute legal assertions, definitions, conclusions, and/or argument to
16 which no response is required; however, to the extent that any response is required,
17 Defendants deny the allegations contained in paragraph 92 of the Complaint.

18 93. In answering paragraph 93 of the Complaint, the allegations contained
19 therein constitute legal assertions, definitions, conclusions, and/or argument to
20 which no response is required; however, to the extent that any response is required,
21 Defendants deny the allegations contained in paragraph 93 of the Complaint.

22 94. In answering paragraph 94 of the Complaint, Defendants lack
23 sufficient information to either admit or deny Plaintiff's allegations and therefore,
24 Defendants deny Plaintiff's allegations. Defendants are unaware of "CANNERS
25 DELI" and therefore, unable to admit or deny any allegations regarding the same.
26 Otherwise, the allegations contained therein constitute legal assertions,
27 conclusions, and/or argument to which no response is required; however, to the
28 extent that any response is required, Defendants deny the allegations contained in

1 paragraph 94 of the Complaint.

2 95. In answering paragraph 95 of the Complaint, Defendants lack
3 sufficient information to either admit or deny Plaintiff's allegations and therefore
4 Defendant's deny Plaintiff's allegations. Otherwise, in answering paragraph 95 of
5 the Complaint, the allegations contained therein constitute legal assertions,
6 definitions, conclusions, and/or argument to which no response is required;
7 however, to the extent that any response is required, Defendants deny the
8 allegations contained in paragraph 95 of the Complaint.

9 96. In answering paragraph 96 of the Complaint, the allegations contained
10 therein constitute legal assertions, definitions, conclusions, and/or argument to
11 which no response is required; however, to the extent that any response is required,
12 Defendants deny the allegations contained in paragraph 96 of the Complaint.

13 PRAYER

14 With respect to the remaining paragraphs in the Complaint, specifically those
15 contained on pg. 33, line 1 through pg. 35, line 10, Defendants allege that such
16 paragraphs constitute prayers for relief to which no response is necessary. To the
17 extent that any response is necessary, Defendants specifically deny that Plaintiff is
18 entitled to any relief whatsoever. Except as expressly alleged and denied,
19 Defendants do not have sufficient information or belief to respond to the remaining
20 allegations set forth in Plaintiff's prayers and based thereon deny each and every
21 allegation contained therein and each and every part thereof.

22 AFFIRMATIVE DEFENSES

23 FIRST AFFIRMATIVE DEFENSE

24 1. Plaintiff's Complaint, and each and every cause of action therein, fails
25 to state facts sufficient to constitute any cause of action against Defendants.

26 SECOND AFFIRMATIVE DEFENSE

27 2. Plaintiff is estopped by his conduct from recovering any relief sought
28 in the Complaint, or in any purported cause of action alleged therein, specifically

1 Plaintiff failed to take reasonable measure to learn of or use the accessible facilities
2 at Carneros Deli

3 **THIRD AFFIRMATIVE DEFENSE**

4 3. By his conduct, Plaintiff has waived any right to recover any relief
5 sought in the Complaint, or in any purported cause of action alleged therein.

6 **FOURTH AFFIRMATIVE DEFENSE**

7 4. To the extent Plaintiff suffered any symptoms of mental or emotional
8 distress or injury, it was the result of a pre-existing psychological disorder or
9 alternative concurrent cause, and not the result of any act or omission of
10 Defendants.

11 **FIFTH AFFIRMATIVE DEFENSE**

12 5. Plaintiff did not exercise ordinary care on his own behalf, and his own
13 acts and omissions proximately caused and/or contributed to the loss, injury,
14 damage, or detriment alleged by Plaintiff, and Plaintiff's recovery from
15 Defendants, if any, should be reduced in proportion to the percentage of Plaintiffs'
16 negligence or fault.

17 **SIXTH AFFIRMATIVE DEFENSE**

18 6. Plaintiff is not entitled to recover punitive or exemplary damages from
19 Defendants on the grounds that any award of punitive or exemplary damages would
20 violate Defendants' constitutional rights under the Due Process Clauses of the Fifth
21 and Fourteenth Amendments of the United States Constitution.

22 **SEVENTH AFFIRMATIVE DEFENSE**

23 7. Plaintiff should not recover any damages because Defendants acted in
24 the good-faith belief that their actions were lawful.

25 **EIGHTH AFFIRMATIVE DEFENSE**

26 8. Defendants' acts with respect to Plaintiff, if any, were privileged or
27 otherwise justified, as such activities were proper, fair and legitimate business
28 activities, and/or business related reasons and were neither arbitrary, capricious,

1 nor unlawful, but were undertaken to protect Defendants' economic interest and/or
2 relations.

3 **NINTH AFFIRMATIVE DEFENSE**

4 9. The damages requested by Plaintiff are speculative and without
5 justification in law or fact.

6 **TENTH AFFIRMATIVE DEFENSE**

7 10. Any recovery on any purported cause of action alleged in Plaintiff's
8 Complaint, is barred in whole or in part by Plaintiff's failure to mitigate their
9 damages.

10 **ELEVENTH AFFIRMATIVE DEFENSE**

11 11. Plaintiff's request for injunctive relief is barred by the fact that
12 Plaintiff has an adequate remedy at law in that they also request monetary damages,
13 interest, and an award of attorneys' fees and costs.

14 **TWELFTH AFFIRMATIVE DEFENSE**

15 12. Plaintiff's by reason of his acts, conduct and omissions, are barred
16 from recovery by the doctrine of unclean hands.

17 **THIRTEENTH AFFIRMATIVE DEFENSE**

18 13. Plaintiff's claims fail because Plaintiff did not personally encounter
19 any of the violations alleged within the Complaint.

20 **FOURTEENTH AFFIRMATIVE DEFENSE**

21 14. These answering Defendants provided Plaintiff full and equal
22 enjoyment of the subject facilities.

23 **FIFTEENTH AFFIRMATIVE DEFENSE**

24 15. These answering Defendants did not intentionally impede or impair
25 access of the subject facilities to Plaintiff, and to the extent any discriminatory
26 conduct occurred, which these answering Defendants deny, such conduct was not
27 intentional.

28 ///

1 **SIXTEENTH AFFIRMATIVE DEFENSE**

2 16. If these answering Defendants are responsible in any respect for any
3 injuries or damages suffered by Plaintiff, which these answering Defendants deny,
4 such injuries or damages have been caused by or contributed to by others, and these
5 answering Defendants' proportional liability, if any, should be reduced to the extent
6 thereof.

7 **SEVENTEENTH AFFIRMATIVE DEFENSE**

8 17. If the damages alleged by Plaintiff occurred, which these answering
9 Defendants deny, they were solely caused by Plaintiff's conduct, or were
10 contributed to by Plaintiff's conduct. Plaintiff's recovery, if any, should be reduced
11 by an amount proportionate to Plaintiff's conduct contributing to the alleged
12 damages.

13 **EIGHTEENTH AFFIRMATIVE DEFENSE**

14 18. To the extent the subject facilities violated any accessibility
15 requirements, which these answering Defendants deny, curing the access barriers
16 is not readily achievable, nor are alternative methods readily achievable, easily
17 accomplishable, technically feasible, would create safety hazards, and/or would
18 result in an undue burden on Defendants and others.

19 **NINETEENTH AFFIRMATIVE DEFENSE**

20 19. To the extent the subject facilities violated any accessibility
21 requirements, which these answering Defendants deny, any alleged wrongful acts
22 or omissions claimed by Plaintiff do not subject Defendants to liability because any
23 and all alterations to the facility, if any were made to ensure the facility would be
24 readily accessible to the maximum extent feasible.

25 **TWENTIETH AFFIRMATIVE DEFENSE**

26 20. To the extent the subject facilities violated any accessibility
27 requirements, which these answering Defendants deny, any alleged wrongful acts
28 or omissions claimed by Plaintiff do not subject Defendants to liability because the

1 scope and cost of any and all alteration to the path of travel to the altered area
 2 containing a primary function, if any, would be disproportionate to the cost of the
 3 overall alteration of the primary function area, if any.

4 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

5 21. Any alleged wrongful acts or omissions claimed by Plaintiff do not
 6 subject Defendants to liability because Defendants accommodated Plaintiffs'
 7 alleged disability by providing services via alternative methods other than the
 8 removal of alleged architectural barriers.

9 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

10 22. Any alleged wrongful acts or omissions claimed by Plaintiff do not
 11 subject Defendants to liability as the alterations being proposed by Plaintiffs on
 12 Defendants are not required under Federal or California law as they would impose
 13 an undue burden upon Defendants.

14 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

15 23. Plaintiff's claims are barred because he failed to request any
 16 modification, alternative services, or other changes to Carneros Deli prior to
 17 initiating his lawsuit.

18 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

19 24. Plaintiff's claims are barred to the extent he is a vexatious litigant.

20 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

21 25. Defendants did not intentionally impede or impair access to Plaintiff
 22 and allege that to the extent any alleged discriminatory conduct occurred, which
 23 Defendants expressly deny, that such conduct was not intentional.

24 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

25 26. These answering Defendants are small businesses pursuant to Civil
 26 Code section 55.56, and corrected all alleged violations of accessibility
 27 requirements within 30 days of having been served with the complaint.

28 ///

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

27. Plaintiff failed to satisfy all notice and procedural requirements prior to filing a cause of action against Defendants alleging violations of accessibility requirements.

WHEREFORE, these answering Defendants pray as follows:

1. That Plaintiff take nothing by his Complaint for damages;
2. That Plaintiff's Complaint herein be dismissed in its entirety with prejudice;
3. That Defendants recover its costs of suit herein, including its reasonable attorneys' fees; and
4. That the court award such other and further relief as it deems appropriate.

Dated: May 4, 2016

Respectfully submitted,

FISHER & PHILLIPS LLP

By: /s/ Christine D. Baran
CHRISTINE D. BARAN
COLIN P. CALVERT
Attorneys for Defendants
BAMBURY INCORPORATED dba
CARNEROS DELI, and CATHERINE
BONNEAU VINEYARD LLC

CERTIFICATE OF SERVICE

I, the undersigned, am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; am employed with the law offices of Fisher & Phillips LLP and my business address is 2050 Main Street, Suite 1000, Irvine, California 92614.

On May 4, 2016 I served the foregoing document entitled **DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES** on all the appearing and/or interested parties in this action by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Thomas E. Frankovich, Esq.
THOMAS E. FRANCOVICH a
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 Vallejo, CA 94590
 Tel: (415) 444-5800
 Fax: (415) 674-9900
 tfrankovich@disabilitieslaw.com

Attorneys for Plaintiff
BYRON CHAPMAN

☐ **[by MAIL]** - I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.

☒ **[by ELECTRONIC SUBMISSION]** - I served the above listed document(s) described via the United States District Court's Electronic Filing Program on the designated recipients via electronic transmission through the CM/ECF system on the Court's website. The Court's CM/ECF system will generate a Notice of Electronic Filing (NEF) to the filing party, the assigned judge, and any registered users in the case. The NEF will constitute service of the document(s). Registration as a CM/ECF user constitutes consent to electronic service through the court's transmission facilities.

☐ **[by FEDERAL EXPRESS]** - I am readily familiar with the firm's practice for collection and processing of correspondence for overnight delivery by Federal Express. Under that practice such correspondence will be deposited at a facility or pick-up box regularly maintained by Federal Express for receipt on the same day in the ordinary course of business with delivery fees paid or provided for in accordance with ordinary business practices.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed May 4, 2016 at Irvine, California.

Jill McIntee

Print Name

By: 

Signature